

new
4/24/11
530PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Chen Michael
 (Last) (First) (Initial)

Prisoner Number P40268

Institutional Address TCCF, 415 U.S. Highway 49 North, Tutwiler, MS 38963

E-filing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Michael Chen
 Full Name of Petitioner

CV11**4255****JSW**

Case No. (To be provided by the
 clerk of court) **(PR)**

vs.

Bobby Phillips, Warden of CCA/TCCF PETITION FOR A WRIT OF HABEAS CORPUS
 Name of Respondent et al Clarification of "What Law Governs CCA or MS"
 (Warden or jailor)

Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

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petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition? NONE.
- ☒ Other (Specifically) What Law Governs A California Prisoner Injured In CCA/TCCF, MS.
- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):
- SANTA CLARA SUPERIOR COURT SANTA CLARA, CA
Court Location
- (b) Case number, if known _____
- (c) Date and terms of sentence 26 YEARS
- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where? I'm A CALIFORNIA PRISONER BEING HOUSED IN CCA/TCCF IN TUTWILER, MS.
(Name of Institution) (Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Robbery

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐ Preliminary Hearing: Yes ☒ No ☐ Motion to Suppress: Yes ☐ No ☐

4. How did you plead?

Guilty _____ Not Guilty _____ Nolo Contendere ☒

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have? NONE

Jury _____ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes ☐ No ☒ NA

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes ☒ No ☐
 (b) Preliminary hearing Yes ☒ No ☐
 (c) Time of plea Yes ☒ No ☐
 (d) Trial Yes ☒ No ☒
 (e) Sentencing Yes ☒ No ☐
 (f) Appeal Yes ☒ No ☒
 (g) Other post-conviction proceeding Yes ☐ No ☒

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____
			(Year)	(Result)
Supreme Court of California	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	_____
			(Year)	(Result)
Any other court	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<u>1999</u>	<u>DENIED</u>
Appellate Division of Superior Court			(Year)	(Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes ☐ No ☒

(c) Was there an opinion? Yes ☐ No ☒

(d) Did you seek permission to file a late appeal under Rule 31(a)?
 Yes ☐ No ☐

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes No ✓

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

- I. Name of Court SUPREME COURT of CALIFORNIA
- Type of Proceeding HABEAS CORPUS - S188785
- Grounds raised (Be brief but specific):
- a. UNWAIVABLE STATUTORY RIGHTS. THIS UNWAIVABILITY DERIVES FROM TWO STATUTES
 - b. TO ADDRESS THE OVERCROWDING CRISIS, THE GOVERNOR ORDERED CDCR OFFICIALS
 - c. REMAINING UNDER CALIFORNIA'S JURISDICTION ALSO MEANS THAT THE PRISONER IS
 - d. VIOLATED PETITIONER'S 8th AND 14 AMENDMENTS TO U.S. CONSTITUTION
- Result PETITION FOR WRIT of HABEAS CORPUS DENIED Date of Result JANUARY 12, 2011
- II. Name of Court SUPREME COURT of CALIFORNIA
- Type of Proceeding IN RE MICHAEL CHEN ON HABEAS CORPUS - S188785
- Grounds raised (Be brief but specific):
- a. MOTION FOR RECONSIDERATION BASED ON NEW CHANGE IN LAW, EFFECTIVE 01-28-11
 - b. ISSUANCE OF AN ORDER TO SHOW CAUSE TO REVIEW THE DECISION
 - c. PURSUANT TO RULE 978 OF THE CAL. RULES of Ct, PETITIONER'S REQUEST FOR Publication
 - d. _____
- Result MOTION FOR RECONSIDERATION DENIED Date of Result JUNE 2, 2011
- III. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result _____ Date of Result _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes ☐ No ☒

(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: It is evident that an "Agreement" cannot be made to serve

AS A VEHICLE FOR THE WAIVER OF STATUTORY RIGHTS CREATED BY THE CAL. CODE

Supporting Facts: ALL CONTRACTS WHICH HAVE FOR THEIR OBJECT, DIRECTLY OR INDIRECTLY, TO EXEMPT ANYONE FROM RESPONSIBILITY FOR HIS OWN FRAUD, OR WILLFUL INJURY TO THE PERSON OR PROPERTY OF ANOTHER, OR VIOLATION OF LAW, WHETHER WILLFUL OR NEGLIGENT, ARE AGAINST THE POLICY OF THE LAW.

Claim Two: HABEAS CORPUS DENIED ON 01-12-11, PRIOR TO THE EFFECTIVE AND IMPLEMENTATION DATE OF 01-28-11, PRIOR TO THIS NEW CHANGE IN LAW.

Supporting Facts: THIS NEW CHANGE IN LAW WHICH BRINGS ABOUT THE AMENDMENT OR ADOPTION OF 21 SECTIONS OF THE CALIFORNIA CODE OF REGULATIONS (CCR), TITLE 15, CRIME PREVENTION AND CORRECTIONS, TO INCORPORATE INTO THE CCR, PROVISIONS CONCERNING INMATE / PAROLEE APPEALS.

Claim Three: REMAINING UNDER CALIFORNIA'S JURISDICTION ALSO MEANS THAT THE PRISONER IS ENTITLED TO ANY RIGHTS OR BENEFITS HE OR SHE WOULD HAVE RECEIVED IN CALIFORNIA. P.C. § 11189, ART. IV(e).

Supporting Facts: IN ASCERTAINING IN PERSONAL INJURY ACTION WHETHER OVERRIDING INTEREST OF ANOTHER STATE, OTHER THAN STATE WHERE INJURY OCCURRED, EXISTS SO AS TO OVERCOME PRESUMPTION THAT STATE WITH MOST SIGNIFICANT RELATIONSHIP IS STATE WHERE INJURY OCCURRED AND THAT STATE'S SUBSTANTIVE LAW APPLIES, CERTAIN FACTORS MUST BE EVALUATED,

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

Monday, May 23, 2011 U.S. Supreme Court decision in Plata v. Brown, originally filed in 2001.
MARCIANO PLATA ET AL V. BROWN No. C01-1351 TEH

Do you have an attorney for this petition? Yes ☐ No ☒

If you do, give the name and address of your attorney:

PREPARED BY: ISAAC NICHOLAS IN PRO SE

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on July 12, 2011
Date

ch
Signature of Petitioner

Michael Chen

P40268

TCCF

415 U.S. Highway 49 North

Tutwiler, Mississippi 38963



CONFIDENTIAL

Legal Mail

PER CAL. CODE REGS.

CLERK of the
FOR THE No
45

SAN FRANCISCO

Per

RECEIVED
AUG 29 2011